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proceedings upon such bill. Held that, assuming that a suit by an insane person by her next friend for the sale of land in which she had a life estate could be maintained under section 2436b, the decree therein authorizing such sale was void, where the requirements of sections 2433, 2434, and 2435 were not complied with.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 118-124; Dec. Dig. § 71.\* 7 Va.-W. Va. Enc. Dig. 687.]

**4. Insane Persons (§ 94\*)—Actions—Suing by Next Friend.**—While ordinarily an insane person may sue in equity by next friend, a suit under Code 1904, § 2616, authorizing suits by the committee of any insane person to sell her estate, or any estate in which she is interested with others, must be brought by the committee, and not by a next friend.

[Ed. Note.—For other cases, see *Insane Persons*, Cent. Dig. §§ 164, 165; Dec. Dig. § 94.\* 7 Va.-W. Va. Enc. Dig. 695; 14 Va.-W. Va. Enc. Dig. 560.]

**5. Judgment (§ 713\*)—Conclusiveness—Matters Concluded.**—Where, after a decree in a suit by an insane person's next friend to ratify a sale of real estate in which the insane person had a life estate, ejectment actions were brought in the name of the insane person by her next friend against subsequent purchasers of the land, in which the court, on the evidence and an agreed statement of facts, rendered judgment for each defendant, such judgments standing unreversed, however erroneous, were conclusive on the parties to the actions and their privies as to the validity of the proceedings in the suit to ratify the sale, the decree ratifying it, and the deeds executed in pursuance thereof.

[Ed. Note.—For other cases, see *Judgment*, Cent. Dig. §§ 1063, 1066, 1099, 1234-1237, 1239, 1241, 1247; Dec. Dig. § 713.\* 6 Va.-W. Va. Enc. Dig. 341; 14 Va.-W. Va. Enc. Dig. 466; 15 Va.-W. Va. Enc. Dig. 419.]

Appeal from Circuit Court, Prince William County.

Suit by Alma Thomas and others against William M. Wheeler and others. From the decree, defendants appeal, and, from a part thereof, the complainants also appeal. Affirmed in part, and reversed in part.

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THOMAS & CROSS *v.* BROWN.

March 12, 1914.

[81 S. E. 56.]

**Accord and Satisfaction (§ 12\*)—Payment of Part—Coercion—Statutes—Construction.**—Code 1904, § 2858, provides that part per-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

formance of an obligation, either before or after breach, when expressly accepted by the creditor in satisfaction, and under an agreement for that purpose, though without any new consideration, shall extinguish the obligation, promise, or undertaking. Held, that where on completion of plaintiffs' contract to construct certain houses for defendant, there was no claim on his part that the entire balance of the contract price was not payable in full, but he refused to pay unless plaintiffs deducted \$450.54 from their bill, which they were compelled to do because they were in financial straits and had to have the money, for which they executed a receipt in full, there was no acceptance of the lesser amount in satisfaction within the statute sufficient to preclude a recovery of the amount so deducted.

[Ed. Note.—For other cases, see Accord and Satisfaction, Cent. Dig. §§ 92, 93, 96; Dec. Dig. § 12.\* 4 Va.-W. Va. Enc. Dig. 843.]

Error to Hustings Court, Part II, City of Richmond.

Action by Thomas & Cross against Harvey C. Brown. Judgment for defendants, and plaintiffs bring error. Reversed.

*Hunsdon Cary*, of Richmond, for plaintiffs in error.

*Wallace F. Brown*, of Richmond, for defendant in error.

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TYSON, Clerk of Court, v. SCOTT et al.

March 12, 1914.

[81 S. E. 57.]

**Limitation of Actions (§ 130\*)—New Action—Appeal from Clerk's Order—Wills—Probate.**—Code 1904, § 2934, provides that, if an action is commenced in due time, and judgment is reversed on a ground which does not preclude a new action for the same cause, or if there be occasion to bring a new suit by reason of the loss or destruction of any of the papers or records in a former suit which was in due time, or if, in a pending suit commenced in due time, plaintiff is found to have proceeded in the wrong forum, or brought the wrong form of action, and judgment is rendered against him on that ground alone, in every such case, notwithstanding the expiration of the time within which a new action must otherwise have been brought, the same may be brought within a year after such abatement, arrest, or reversal of judgment, etc. Held that, where relators instituted proceedings under Code 1904, § 2544, for the impeachment of a will and codicil, and it was held on appeal that the action could not be maintained prior to an appeal taken from the ex parte order of the clerk admitting the will and codicil to probate, as authorized by section 2639a, such appeal was not a "new suit" within sec-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.